IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.587 of 2001

Judgment reserved on: 30.7.2007

Date of Decision: August 8 , 2007

State of H.P. & ors. … Petitioners

Versus

Viveka Nand … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner : Mr. R.M.Bisht, Deputy Advocate General.

For the Respondent : Mr. K.D.Shreedhar, Advocate.

Deepak Gupta, J.

This writ petition has been filed by the State and is directed against the order of the learned H.P. State Administrative Tribunal dated 10.1.2001 passed in OA No. 1822 of 1997.

The brief facts necessary for decision of the case are that the original applicant- respondent (hereinafter referred to as the respondent) was working as Constable in the police. According to him, he proceeded on leave on 1.3.1995 but due to his ill health continued to be on leave till 10.4.1995. According to the petitioner -State, the respondent who was posted in the Security Branch of the Superintendent of Police, Shimla was transferred to the Police

Station (West) on 1.3.1995 and was relieved on 4.3.1995 vide Daily Diary No.5. The case of the petitioner is that the respondent refused to acknowledge the Daily Diary Report and did not sign the same. He also did not join his duty at Police Station (West). Thereafter, a memo was issued to him on 10.5.1995 directing him to join his duties, which he failed to do so. The Station House Officer, Police Station Sadar, Shimla was directed to initiate proceedings against the respondent under Section 29 of the Police Act. Challan was submitted in the Court of the Chief Judicial Magistrate, Shimla. Later since the departmental proceedings were initiated, the challan under Section 29 of the Police Act was withdrawn from the Court of the Chief Judicial Magistrate, Shimla.

The charge-sheet was issued against the respondent wherein it was alleged that he had not joined his duties at Police Station (West) in pursuance of the order dated 1.3.1995 and thereafter remained absent from duty till the date of the issuance of the charge-sheet. This charge-sheet was issued and the notice was served upon the respondent on 28.1.1997. Various communications were sent to the respondent to join his duty but he did not join his duty. The Inquiry Officer gave his report wherein he found that the respondent was guilty of having remained absent from duty from 1.3.1995 till the date of issuance of the notice. Thereafter, show cause notice was issued to the respondent and his services were terminated.

The respondent challenged the said show cause notice by filing OA No. 1822 of 1997. According to the respondent, he met

with a serious accident on 6.6.1994 while on duty with Lt. Gen. T.S. Oberoi. According to him, on 1.3.1995, he had proceeded on leave for 7 days and thereafter kept applying for extension of leave vide telegrams dated 8.3.1995, 12.3.1995 and 10.4.1995. According to the respondent, he was under the belief that his medical leave must have been sanctioned. His case is that thereafter on 15.4.1995 he went to the office of the S.P.Shimla but was not permitted to join his duties. The case of the respondent is that after 15.4.1995 he went to the office of S.P.Shimla several times but he was not allowed to mark his attendance.

The learned Tribunal has allowed the Original Application filed by the respondent primarily on the ground that since the respondent has been paid his salary from 5.3.1995 to 10.4.1995, therefore, departmental proceedings are misdirected and unwarranted. No doubt, the respondent has been paid salary from 1.3.1995 to 10.4.1995 but there is no material on record to show that after 10.4.1995 he ever joined his duties. Several letters were issued to him to join his duty but he has not done so. The mere fact that he had been paid his salary from 10.4.1995 may at best give rise to the presumption that leave was sanctioned in his favour for the period from 1.3.1995 to 10.4.1995 but there is no explanation for his absence after 10.4.1995. The State has placed on record a number of documents to show that the respondent was asked to join his duties from time to time for a period of 1-1/2 years but he failed to do so. Therefore, there was no option but to start departmental inquiry against him.

In a disciplined force like the police, no person can remain absent without duly sanctioned leave. The services of the respondent have been terminated after holding proper inquiry. The learned Tribunal in our considered view has gravely erred in holding that the disciplinary proceedings were unwarranted.

In view of the aforesaid discussion, we allow the writ petition and set aside the order of the learned Tribunal dated 10.1.2001 passed in OA No.1822/1997 and dismiss the Original Application filed by the respondent.

(Deepak Gupta),J.

August 8, 2007 (V.K.Ahuja), J.

s.